IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

MFA.No. 973 of 2000(D)

O.P(MV).NO.46/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM.
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APPELLANT/PETITIONER:

K.K. GOPINATHAN NAIR, (CORRECTED AS PER ORDER IN I.A. NO. 7958/98 DTD. 10/11/99), S/O. KESAVAN PILLAI, THOTTATHIL HOUSE, ELANTHOOR.

BY ADV. SMT.SALLY THOMAS CHACKO.

RESPONDENTS/RESPONDENTS:
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1. **V.A. MARAKKAR, VADAPPILLY HOUSE, THAIKKATTUKARA.P.O., ALUVA.**
2. **SURESH BABU, NATTAPILLY VEETTIL, THAIKKATTUKARA.P.O., ALUVA.**
3. **THE NATIONAL INSURANCE CO. LTD., COCHIN -16.**

BY ADV. SRI.LAL GEORGE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.973 OF 2000

Dated 15th October, 2007

JUDGMENT

Koshy,J.

Appellant while travelling in a car, a bus bearing registration No.KDE 1512 hit against the car and he sustained serious injuries. Appellant claimed a compensation of Rs.2,00,000/=. The Tribunal found that the accident occurred due to the negligence of the second respondent who was driving the bus and the above bus was owned by the first respondent and insured by the third respondent, but, total amount of compensation awarded was only Rs.35,250/=. Only quantum of compensation is disputed in this appeal. With regard to the income of the appellant, Tribunal fixed Rs.3,000/= as the monthly income. He was a Village Officer. Even though it was claimed that his monthly income was Rs.4,500/=, no salary certificate was produced. A certificate was produced before this court. Considering the above certificate also we are of the opinion that fixation of monthly income at Rs.3,000/= was reasonable. As far as the injuries are concerned, Ext.A10 is the copy of the wound certificate and Ext.A5 is the discharge summary. It is proved by Exts.A5 & A10 that in the accident the appellant sustained the following injuries:

"1) Lacerated wound over (Rt) eye, eye lid
2) Contusion (Rt) eye
3) 6 x 4 cm lacerated wound lateral to and abo (Rt) eye
4) Swelling over (Rt) knee with contusion
5) 2 x ¼cm lacerated wound over (Rt) shoulder with glass pieces
6) 5 x 2 cm lacerated wound over (Rt) arm distal 1/3rd
7) 5 x 1 ½ lacerated wound posterior aspect of (Rt) shoulder with multiple abrasions
8) Cerebral concussion."

He was admitted in the hospital on 14-3-94, removal of glass pieces and suturing of wounds done by the orthopaedic surgeon and right eye brow wound sutured by opthalmic surgeon and he was discharged on 18.3.1994. Appellant produced Ext.A9 certificate of disability assessed by the District Medical Board. In Ext.A9 certificate it is certified that appellant has chronic frontal head ache right side with occasional vertigo and defective closure of right eye and moderate hearing loss right ear and has 10% disability. Admittedly, at the time when Ext.A9 was issued the age of the appellant was 52 years. The Tribunal did not accept the above disability certificate merely because it is not stated that the disability is permanent and considering the wounds in Ext.A10 certificate only Rs.5,000/= was awarded for disability, loss of earning power, loss of amenities etc. The Tribunal also found that the injuries cased disfiguration to his right humerus and near the right eye and Rs.5,000/= was granted for disfiguration. We are of the opinion that the Tribunal went wrong completely disregarding the disability certificate issued by the Medical Board.

The Medical Board issued Ext.A9 certificate on 11.10.1994, after about seven months of the accident. The Board assessed actually his permanent disability. It is true that appellant was employed as Village Officer. His emoluments and retiral benefits are also not affected. But, at the same time, retirement age of State Government officials is only 55. He has to retire after three years. After retirement also he can take up employment. That opportunity is lost. He has to suffer the disability throughout his life. In the above circumstances, since his employment was not affected we are not awarding compensation on a multiplier method. We are of the view that appellant is entitled to an additional amount of Rs.15,000/= for disability, loss of learning power and loss of amenities, over and above the decreed amount by the Tribunal. The above amount of Rs.15,000/= should be deposited by the third respondent insurance company with 7.5 % interest from the date of application till its deposit. Since the accident occurred more than 13 years ago, on deposit of the amount the appellant is entitled to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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